

**STATE OF NEW YORK
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE**

REQUEST: December 2, 2005
CASE #: XXXXX
AGENCY: Nassau
FH #: 4450135P

In the Matter of the Appeal of
G B
from a determination by the Nassau County
Department of Social Services

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**DECISION
AFTER
FAIR
HEARING**

JURISDICTION

Pursuant to Section 22 of the New York State Social Services Law (hereinafter Social Services Law) and Part 358 of Title 18 NYCRR, (hereinafter Regulations), a fair hearing was held on January 10, 2006, in Nassau County, before Dennis D'Andrea, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

G B, Appellant
Herbert Harris, Esq., Nassau-Suffolk Law Services

For the Social Services Agency

Will Denson, Fair Hearing Representative

ISSUE

Was the Agency's determination to discontinue the Appellant's Public Assistance for failure to provide documentation necessary to determine the Appellant's continuing eligibility for such benefits correct?

FINDINGS OF FACT

An opportunity to be heard having been afforded to all interested parties and evidence having been taken and due deliberation having been had, it is hereby found that:

1. The Appellant has been in receipt of Public Assistance benefits for his own needs.

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2. The Appellant was advised by the Agency on October 10, 2005, to submit the following documentation to the Agency by November 11, 2005:

Completed Medical Form Number 279.

3. The Appellant did not timely submit a completed Medical Form Number 279.

4. On November 25, 2005 the Agency sent a Notice of Intent setting forth its determination to discontinue the Appellant's Public Assistance benefits because the Appellant had failed to submit a completed Medical Form Number 279.

5. On December 2, 2005, the Appellant requested this fair hearing.

APPLICABLE LAW

Regulations at 18 NYCRR 351.1 and 351.2 require that to demonstrate eligibility, applicants for and recipients of Public Assistance must present appropriate documentation of such factors as identity, residence, family composition, rent payment or cost of shelter, income, savings or other resources and, for aliens, of lawful residence in the United States. These obligations also apply to non-legally responsible caretaker relatives of children receiving public assistance, as well as minor siblings of such children residing in the same household. Section 351.5 of the Regulations provides that if the applicant or recipient has previously verified necessary information which is not subject to change and the Agency possesses documentation of such verification in its files, the applicant or recipient is not required to resubmit verification of such information. Section 351.6 of the Regulations provides that verification of data is an essential element of the eligibility investigation process. The applicant or recipient is the primary source of the required information. However, when the applicant or recipient is unable to provide the required verification, the Agency must assist the applicant or recipient in obtaining the verification or make collateral investigation. 18 NYCRR 351.5 and 351.6. If a third party seeks to impose a charge or fee for providing required information to the applicant or recipient, the Agency must pay such fee or must assist the applicant or recipient in obtaining the information by other means. 18 NYCRR 351.5. The applicant's or recipient's failure or refusal to cooperate in providing necessary information is a ground for denying or discontinuing Public Assistance.

Section 351.21(a) of 18 NYCRR provides that contacts with recipients and collateral sources shall include face-to-face contacts, correspondence, reports on resources, eligibility mailouts and other documentation. Contacts with or concerning recipients shall be made as frequently as individual need, change in circumstances or the proper administration of assistance or care may require.

An applicant for or recipient of public assistance is exempt from complying with any requirement concerning eligibility for public assistance if the applicant or recipient establishes that good cause exists for failing to comply with the requirement. Except where otherwise specifically set forth in regulations, good cause exists when the applicant or recipient has a physical or mental condition which prevents compliance; the applicant's or recipient's failure to

comply is directly attributable to Agency error; or other extenuating circumstances, beyond the control of the applicant or recipient, exist which prevent the applicant or recipient from being reasonably expected to comply with an eligibility requirement. The applicant or recipient is responsible for notifying the Agency of the reasons for failing to comply with an eligibility requirement and for furnishing evidence to support any claim of good cause. The Agency must review the information and evidence provided and make a determination of whether the information and evidence supports a finding of good cause. 18 NYCRR 351.26.

DISCUSSION

The Appellant contended that he did not receive a blank Medical Form Number 279 to be completed. The Appellant's legal counsel contended that the Agency's Case Comments for the period September 21 through November 3, 2005, do not record the mailing of a 279 form, even though the Agency is contending that such form was issued on October 10, 2005. In addition, according to legal counsel, there is no other proof of mailing. Legal counsel entered into evidence a letter from Mr. Russell Hanks, deputy general counsel, Office of Administrative Hearings, stating, "Under these circumstances, the print screen was acceptable evidence of the date the 279 medical form was computer generated, but not evidence that it was mailed to the proper address." The Appellant contended that he has always responded to any correspondence received from the Agency and that he has had no difficulties with mail delivery. He further contended that he has resided at W Avenue for "a couple of years."

The Agency responded that the Appellant has not submitted a report from an orthopedist and that the Appellant has a propensity not to timely return documents. The Agency entered into evidence a print screen stating the Appellant's address, the referral specialty, the date the form was mailed and the due date. The Agency representative testified that the medical form was mailed to the Appellant in a window envelope with the address of record showing through. The letter was not returned marked undeliverable by the U.S. Postal Service.

The print screen is not evidence that the form was mailed to the proper address. The Agency did not submit a copy of the actual correspondence to the Appellant. The Case Comments do not confirm the mailing. The Appellant has not returned the completed form and consequently the Agency's determination was correct when made. At the fair hearing the Agency failed to establish mailing of the disputed medical form. Therefore, the Agency's determination, although correct when made, cannot be implemented at this time.

DECISION AND ORDER

The Agency's determination to discontinue the Appellant's Public Assistance benefits, although correct when made, cannot be implemented at this time.

1. The Agency is directed to continue the Appellant's Public Assistance.
2. The Agency is further directed to restore lost benefits retroactively to December 5, 2005, the date of discontinuance.

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3. The Agency is further directed to issue a new medical form if completion of which remains necessary.

Should the Agency need additional information from the Appellant in order to comply with the above directives, it is directed to notify the Appellant promptly in writing as to what documentation is needed. If such information is requested, the Appellant must provide it to the Agency promptly to facilitate such compliance.

As required by 18 NYCRR 358-6.4, the Agency must comply immediately with the directives set forth above.

DATED: Albany, New York
February 13, 2006

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By

[[Signature]]

Commissioner's Designee